

floor time and delays to consider even nominations that could be confirmed easily, grinding our progress to a halt. I hope that the Republican Senators and leadership will relent and end the year by making progress on these important nominations to put us on a better path for the next session.

#### THE TORTURE VICTIMS PROTECTION ACT

Mr. LEAHY. Mr. President, the U.S. Supreme Court recently granted certiorari in a case involving the Torture Victim Protection Act of 1991, TVPA, a law I supported from the earliest days following its introduction by Senator SPECTER in the summer of 1986. Senator SPECTER and I worked for years to see this historic human rights bill become law in 1991. Yet today I am concerned that the TVPA's crucial role in protecting human rights may be weakened or even rendered meaningless. The Supreme Court case, *Samantar v. Yousuf*, may decide the fate of this landmark law.

The TVPA provides a Federal cause of action against any individual who subjects any person to torture or extrajudicial killing. This cause of action is available where the individual acts under actual or apparent authority, or under color of law of any foreign nation. Congress passed the TVPA in response to widespread use of official torture and summary executions that took place around the world, despite the universal consensus condemning such practices. Congress recognized that neither Federal nor international law was strong enough to curb such egregious human rights abuses. We enacted the TVPA to ensure accountability for those who commit atrocious violations of human rights.

The case currently before the Supreme Court, *Samantar v. Yousuf*, raises the question of whether the Foreign Sovereign Immunities Act, FSIA, allows an action filed under the TVPA to be brought against a former government official of a foreign country who is now living in the United States. The answer is clear in the TVPA and its legislative history. The answer is yes. Congress expressly intended the TVPA to apply against former government officials. In enacting the TVPA, Congress made it explicit that the FSIA would almost never provide a defense to such persons. They can be sued under the TVPA to recoup damages caused by their torturous actions.

The Senate clearly stated its intention to ensure that the TVPA operated in concert with existing law, specifically taking into account the FSIA, the Alien Tort Claims Act, and the United Nations Convention Against Torture, which the United States signed in 1988. This point was discussed extensively as we drafted and refined the legislation. The operation of the TVPA was considered in a hearing held by the Judiciary Committee's Subcommittee on Immigration and Ref-

ugee Affairs in June 1990. The committee was not oblivious to the concerns raised at the time by the executive branch regarding sovereign immunity. We were cognizant of the role of the executive to manage foreign policy. We addressed each of these concerns in turn, but we were not persuaded that they outweighed the importance of creating a private cause of action under the TVPA. The full Congress agreed when it enacted the TVPA in March 1992.

The TVPA was drafted, in part, in response to gaps in two existing laws: the Alien Tort Claims Act and the Convention Against Torture. In deciding whether the Alien Tort Claims Act could be used by victims of torture committed abroad, one Federal judge expressed concern that separation of powers principles required an explicit grant by Congress of a private right of action for lawsuits that affect foreign relations. The Alien Tort Claims Act did not have such an explicit grant. Congress responded by enacting the TVPA with an unambiguous basis for a cause of action.

Similarly, the United States signature on the Convention Against Torture was an important and symbolic step in the prevention of torture, but the Convention fell short of the TVPA in at least two important respects. First, the Convention required that signatories open their courts to suits for damages caused by torture in their own countries. That policy was welcome but insufficient. The TVPA allows torture victims to sue their abuser without returning to the country of abuse. Congress took this step because it believed that governments that had allowed torture to occur within their jurisdiction would not necessarily provide meaningful redress to victims. Furthermore, torture victims who escaped from the country of abuse would not eagerly return to that country to file suit. Congress designed the TVPA specifically to respond to that situation by opening U.S. courts to these cases and providing a civil cause of action here in the United States for torture committed abroad.

Second, by creating a Federal cause of action in our own courts, Congress ensured that torturers would no longer have a safe haven in the United States. The legislation served notice to individuals engaged in human rights violations that their actions were anathema to American values and they would not find shelter from accountability here.

Congress explicitly drafted the TVPA to strengthen and expand the scope of action that victims of torture could take in our courts, but Congress was nonetheless conscious of the bill's limits. The TVPA was not meant to override traditional diplomatic immunities or the FSIA's grant of immunity to foreign governments. The act struck a balance. It protected well established notions of sovereign and diplomatic immunities for current political actors without creating a safe haven for the

perpetrators of horrible acts after they left their official positions and settled in, or fled to, the United States.

For example, Congress carefully created the cause of action against an "individual" to ensure that foreign states or their entities could not be sued under the act under any circumstances. Similarly, we discussed at length the fact that the legislation would not permit a suit against a former leader of a country merely because an isolated act of torture occurred somewhere in that country. But Congress neither intended nor imagined that the FSIA would provide former officials with a defense to a lawsuit brought under the TVPA. Such an interpretation would undermine the purpose of the law. The TVPA was not intended to cover the torturous acts of private individuals. To the contrary, in order for a defendant to be liable under the TVPA, the torture must have been taken "under actual or apparent authority or under the color of law of a foreign nation." The Judiciary Committee explicitly stated in its report on the bill that, "the FSIA should normally provide no defense to an action taken under the TVPA against a former official."

I hope that the Supreme Court studies this definitive and comprehensive history as it considers the case of *Samantar v. Yousuf*. Congress clearly intended the TVPA to extend to former officials of foreign countries if they choose to come to the United States after leaving their positions of authority. Congress also stated that the FSIA does not extend immunity to such individuals. Claims that a suit brought against a former official would undermine the FSIA and endanger foreign relations are simply inaccurate. Congress properly weighed the foreign policy concerns when it passed the TVPA. The Supreme Court should not overrule the well-considered judgment of Congress.

#### DETERIORATING SITUATION IN NEPAL

Mr. LEAHY. Mr. President, over the years, both during and since the end of the monarchy in Nepal, I have urged the Nepal Army to respect human rights and cooperate with civilian judicial authorities in investigations of its members who abuse human rights. I spoke on this subject a few days ago in relation to the horrific case of Maina Sunuwar, a 15-year-old Nepali girl who was tortured to death by Nepal Army officers who then sought to cover up the crime.

I have also, similarly, urged the Maoists to stop committing acts of violence and extortion against civilians, respect human rights, and work to improve the lives of the Nepali people through the political process. The fact that the Maoists laid down their arms and entered into a peace agreement gave the Nepali people the first chance in Nepal's history to build a democratic government that is responsive to their needs.

It is therefore disheartening that the Maoists continue to engage in tactics that serve little purpose but to make the lives of the Nepali people, already difficult, even harder. They have just staged their latest general strike, which for the past 3 days crippled Nepal's economy.

For 3 days, Nepal, already a poor country, neither imported nor exported goods through its land entry points, causing a significant loss of revenue. Tourism, one of Nepal's most important sources of income for hotels, shops, transport, restaurants, and guide services, has been damaged. The garment industry, also among Nepal's largest, was brought to a halt. And there is the risk that foreign companies will decide that Nepal is still too unstable, and look elsewhere to invest.

What possible good does this kind of protest do? It angers and hurts the very people whose interests the Maoists claim to serve. In fact, it hurts poor people the most, because they and their children do not have savings, and go hungry. And it can hardly make other political parties more likely to accede to the Maoists' demands.

The latest news is that the Maoist leaders have threatened an indefinite national strike unless the government puts in place within a month a unity government headed by the Maoists. This kind of ultimatum, which has no place in a democracy, would be disturbing enough if it were not for the fact that the Maoists headed a coalition government last year after winning national elections, only to leave the government in May when it failed to replace the then army chief of staff.

I also felt that Nepal needed a new army chief who was not tainted by past abuses, but for the Maoists to quit the government and then accuse the President of forcing them to do so when their demands were not met, was irresponsible. Today, in fact, Nepal has a new army chief. Time will tell if he is the right person for the job.

As an observer of developments in Nepal, I have been encouraged by the positive steps the country has taken since the events that led to the end of the monarchy. But the desires that led to that courageous demonstration of popular will remain unfulfilled. The institutions of democracy are barely functioning and the political situation continues to deteriorate. Only 5 months remain until the deadline for drafting a new constitution, and growing distrust between the political parties threatens to derail the peace process. Indeed, the political parties have often seemed more concerned with promoting their own interests than with addressing the needs of the Nepali people. The army has yet to reform. Thousands of Maoist ex-combatants need to be demobilized and trained for jobs in the civilian workplace. Unless the political parties take decisive steps to work together to address these issues, the situation will go from bad to worse, and at some point the Nepali people

may again take matters into their own hands.

In the meantime, the periodic economic shutdowns and acts of violence and intimidation perpetrated by the Young Communist League, cause one to question whether the Maoist leaders understand or accept the responsibilities that are inherent in a democracy. Rather than orchestrating acts of collective punishment to try to force a result, the Maoists need to earn the public's trust and respect. There is also the responsibility to exercise power in a manner that strengthens, not erodes, popular support. So far, the Maoists have failed to demonstrate a capacity for either.

The Communist Party of Nepal—Maoist—today remains a designated foreign terrorist organization under U.S. law. I am among those who would like to see that designation lifted, as I believe the U.S. could, through technical assistance and exchange programs, help the Maoist leaders to better understand the benefits of working constructively within the democratic process on behalf of the Nepali people. But the fact remains that having engaged in acts that got them onto the list in the first place, they need to demonstrate that they have abandoned those tactics and are accountable to the people. Organizing harmful strikes that serve no logical or legitimate purpose, encouraging acts of violence, refusing to punish its own members who committed atrocities, and making threats, are not consistent with a responsible political organization.

Mr. President, poverty and injustice have been a fact of life in Nepal for centuries. Three and a half years ago the Nepali people rose up against a corrupt, abusive monarchy and demanded something better. They are still waiting, but they will not wait forever. Like Nepal's other political parties, the Maoists will be judged by what they deliver.

#### FATE OF HMONG REFUGEES

Mr. LEAHY. Mr. President, I want to speak briefly about a worrisome humanitarian situation that is developing in Thailand, which could cause problems for our relations with the Thai military.

Thailand and the United States are longtime friends and allies, and our Armed Forces have developed a cooperative relationship. Many Thai military officers have been trained in the United States, and Thai soldiers have participated in joint U.S.-Thai training exercises such as Operation Cobra Gold. I expect this relationship to continue. But I am very concerned, as I know are other Senators, that the Thai Government may be on the verge of deporting roughly 4,000 ethnic Hmong back to Laos where many fear persecution.

Thailand has a long history of generosity towards refugees from Burma, Laos, Cambodia and Vietnam. It is a history to be proud of. But the Thai

Government, which insists that the Hmong are economic migrants who should be repatriated, has reportedly deployed additional troops to Phetchabun province where most of the Hmong are in camps. There is a growing concern that the Thai military may expel the Hmong before the end of the year. There is also concern that a group of 158 Hmong in Nongkhai province, who have been screened and granted United Nations refugee status, could be sent back to Laos. I understand that the United States and several countries have told the U.N. High Commissioner for Refugees and the Thai Government they are prepared to consider this group of refugees for resettlement. Potential resettlement countries should be given an opportunity to interview these individuals in Thailand.

It may be that some of the 4,000 Hmong are economic migrants. It is also likely that some are refugees who have a credible fear of persecution if they were returned to Laos. I am aware that many Hmong fought alongside the U.S. military during the Vietnam war. The U.N. High Commissioner for Refugees, working with Thai authorities, needs to determine who has a legitimate claim for asylum and who does not, in accordance with long-standing principles of refugee law and practice. No one with a valid claim should be returned to Laos except on a voluntary basis. The United States, and other countries, can help resettle those who do have valid claims but need access and the opportunity to consider relevant cases.

I mention this because I cannot overstate the consternation it would cause here if the Thai Government were to forcibly return the Hmong to Laos in violation of international practice and requirements. The image of Laotian refugees including many who the United Nations and the Thai Government itself have stated are in need of protection being rounded up by Thai soldiers and sent back against their will during the Christmas season, and the possible violence that could result, is very worrisome. On December 17 I joined other Senators in a letter to the Thai Prime Minister about this, and I will ask that a copy be printed in the RECORD at the end of my remarks.

As chairman of the Department of State, Foreign Operations, and Related Programs Subcommittee of the Appropriations Committee which funds international assistance programs, I have supported U.S. military training programs and other assistance to the Thai military. We share common interests and want to continue to work together. But after the deplorable forced repatriation to China of Uighur refugees by Cambodian authorities last week, we expect better of the Thai Government. Should the Hmong be treated similarly it could badly damage the Thai military's reputation, and put our military collaboration at risk.

Mr. President, I ask unanimous consent to have printed in the RECORD the